In the Drawings:

Fig. 5 has been amended as described in the remarks. Please replace sheet 5 of the drawings with the replacement sheet appended hereto.

REMARKS

Summary

Claims 1-23 were pending, and all of the Claims were rejected in the Office action. The Applicants respectfully traverse the rejection of the claims, as set forth below.

DETAILED RESPONSE

A) Declaration

The Examiner has made a rejection of the supplemental re-issue oath/declaration, said to be filed on January 27, 2006, on the basis that the signatures of all of the inventors are missing. The Applicants respectfully submit that the paper was not formally submitted, as the cover letter to the facsimile of that date had merely requested that the Examiner comment on the adequacy of the form and content of the declaration. In the event, a comment was not received, and the paper submitted on June 15, 2006 traversed the Examiner's determination that the re-issue oath/declaration of September 1, 2004 was defective. At page 8 of the Office action, the Examiner stated that the arguments presented in the paper of June 15, 2006 regarding the re-issue oath/declaration were persuasive. The Applicants are uncertain as to which declaration is being referred to. In any event, at least one of the declarations is acceptable, and the Applicants would prefer that the first submitted oath/declaration be accepted to avoid the inconvenience of obtaining the signatures of all of the inventors again.

B) Drawings

The drawings were objected to under 37 CFR § 1.83(a) as not showing every feature of the invention specified in the claims, in that the limitation of "the electrode of the susceptor electrode being AC shorted to the chamber wall" is not shown. The Applicants believe that the structures are shown.

However, in order to expedite consideration of the application, the Applicants have amended Fig. 5. The Examiner accepts that the specification discloses the

limitation that the electrode of the susceptor electrode is AC shorted to the chamber wall. Fig. 5 has been amended to more clearly show this feature.

Claim Rejections

35 U.S.C. § 102(e)

Claims 1, 6-10, 12-14 and 22-23 were rejected under 35 U.S.C. § 102(e) as being anticipated by Nakano et al. (US 6,270,618;"Nakano"). The Applicants respectfully traverse this objection, as the two applications have a common inventorship. Thus, the reference cited, Nakano, is not by "another" inventive entity, and cannot be used to make a rejection under 35 U.S.C. § 102(e). The same six inventors are co-inventors of the issued patent and the present application. The order of listing of the inventors on the two applications is not identical; however, the order of listing of inventors has no legal significance. As the evidence is a matter of record, no further documentation is required to show that the Examiner has failed to make out a *prima facie* case of anticipation.

35 U.S.C. § 103(a)

Claims 2-5, 11 and 15-21 were rejected under 35 U.S.C. § 103(a) as being obvious over Nakano. The Examiner's arguments in making the rejection are moot; the use of Nakano as a reference is precluded in a 102(e)/103 rejection, as the reference is not available since the references have common inventorship, and therefore the reference is not by "another". As such, a *prima facie* case of obviousness has not been made out.

Double Patenting

Claims 1-23 were rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 4 and 9 of Nakano. In order to make out a *prima facie* case of non-statutory one-way obviousness double patenting, "the invention defined in a claim in the application would have been an obvious variation of the invention defined in a claim of the patent" (MPEP § 804 B1(a)). An obviousness-type double patenting rejection should make clear the differences between the inventions [emphasis added] defined in the conflicting claims and the reasons that a person of ordinary skill in the art would conclude that the claim at issue in the

application would have been an obvious variation of the invention defined in the claim in the patent. (MPEP § 804 B1). The Examiner has merely made a conclusory remark that claims 4 and 9 of the patent meet the one-way obviousness test for Claims 1, 6-10, 12-14 and 22-23 of the present application. Without providing a reason for this conclusion, a *prima facie* case of obviousness has not been made out. Any assertions that the claims of the present application are obvious should have been supported by valid prior art evidence, and the analysis defined in *Graham v. John Deere*, 383 US 1, 148 USPQ 459 (1966). That the claims of one patent may be considered to be dominating over the claims of a second patent is not a sufficient reason for reaching a conclusion of obviousness-type double patenting. *In re Kaplan*, 789 F.2d 1574, 1577-78 229 USPQ 678, 681 (Fed. Cir. 1986).

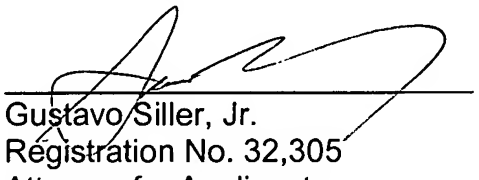
With respect to Claims 2-5, 11, and 15-21, the Examiner accepts that claims 4 and 9 of Nakano do not render the claims of the present application obvious. The Examiner contends that the while Nakano does not expressly disclose that the susceptor electrode and the chamber wall are shorted at a location shorted than 500mm from a side wall of the chamber and that an angle formed between the metal plate and the bottom wall is less than 45 degrees, a *prima facie* case of obviousness is nevertheless made out. The Examiner is not entitled to use the disclosure of Nakano in the obviousness analysis as prior art. *In re Braithwaite*, 379 F.2d 594, 154 USPQ 29 (CCPA 1967). Therefore, no comparison of the present claims and Nakano can be based on the disclosure, or the lack of disclosure, in Nakano.

CONCLUSION

Claims 1-23 are pending. For at least the reasons given above, the Applicants respectfully submit that the pending claims are allowable.

The Examiner is respectfully requested to contact the undersigned in the event that a telephone interview would expedite consideration of the application.

Respectfully submitted,



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